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REMARKS

1. Claim Rejections - 35 U.S.C. § 102

Claims 17-19, 21-28 and 30 have been rejected under 35 U.S.C. § 102(e) over U.S. Patent Application Publication No. 2003/0056002 to Trethewey.

Independent claim 17 is directed to VoIP system that includes a load balancing proxy server used to balance VoIP call load and independent claim 25 is directed to a method of balancing workload in a VoIP system. Claim 17 has been amended to more clearly recite that which the Applicant regards as the invention.

In the system and method, a request from a VoIP client is received by a load balancing server, which reacts by transmitting a request of its own to each of a plurality of VoIP proxy servers. The identity of the first of the VoIP proxy servers to respond is transmitted to the VoIP client to indicate to the VoIP client which one of the VoIP proxy servers the VoIP client should communicate with to complete a VoIP call. The claimed system and process, which are novel and unobvious, efficiently services the VoIP client while distributing workload among a group of VoIP proxy servers.

Turning to Trethewey, Trethewey's load balancer "selects and assigns a server using a conventional selection algorithm" (paragraph 23). No additional details as to what a conventional algorithm might be are provided. Since a reference applied under 35 U.S.C. § 102 must, by itself, teach all aspects of the claimed subject matter to anticipate the claims and Trethewey does not expressly disclose the features recited by the claims, Trethewey cannot be considered to anticipate the claimed subject matter.

The Examiner indicates that the claimed subject matter is inherent in Trethewey. Something is inherent if it is part of the constitution or essential character of that which is taught. For example, conductivity is an inherent property of a copper wire. Just because Trethewey discloses a "conventional" load balancing technique, it does not follow that Trethewey inherently discloses the claimed subject matter. Specific disclosure of the claimed subject matter is required.

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The Examiner relies on U.S. Patent No. 6,680,947 to Denecheau in an attempt to demonstrate that the claimed subject matter is a conventional load balancing algorithm. Multiple reference rejections under 35 U.S.C. § 102 are permitted when the additional reference(s) proves that the primary reference contains an enabled disclosure, explains the meaning of a term used in the primary reference or shows that a characteristic not disclosed in the primary reference is inherent (MPEP § 2131.01). Since none of these permitted uses of an additional reference applies to the instant situation, it will be assumed that the Examiner intended to combine the teachings of Trethewey and Denecheau.

Even if Trethewey and Denecheau were combined or even if the teachings of Denecheau were inherent in the teachings of Trethewey, the claimed invention would not result. In particular, the passage cited by the Examiner (col. 1, lines 39-54) describes a "load balancing problem" and not a load balancing solution.

As set forth in the Background section of Denecheau, multiple devices may happen to receive and respond to discovery frames due to the presence of duplicate MAC addresses in the network (col. 1, lines 22-26). Although Denecheau explains that work stations may be configured to use a route specified in a first response received under these conditions, Denecheau explicitly states that connecting in this manner may cause a "load balancing problem" (col. 1, lines 41-44). In this regard, Denecheau teaches away from the claimed load balancing technique since Denecheau states that using the first response received for connection routing would lead to a load balancing problem.

In addition, load balancing as set forth in the claims is achieved by affirmatively transmitting a request to each VoIP proxy server and passing the identity of the first VoIP proxy server to respond to the VoIP client. It should be apparent that transmission under the claimed technique is not made to plural VoIP proxy servers by the happenstance that more than one server has the same MAC address as described in Denecheau.

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Since the claimed load balancing technique is not explicitly or inherently taught by Trethewey and Denecheau does not cure these deficiencies, Independent claims 17 and 25 recite patentable subject matter.

The dependent claims are allowable for at least the same reasons. In addition, the dependent claims recite additional novel and unobvious aspects of the invention. For instance, claims 18 and 26 recite that the request from the VoIP client is a request for the identity of the VoIP proxy server having the lowest workload. Trethewey merely describes a generic probe request. One cannot make the assumption that the Trethewey probe request is instructive of an explicit request for the identity of the server with the lowest workload as claimed.

As another example, claims 19 and 27 recite that the requests transmitted by the load balancing proxy server to the VoIP proxy servers are call requests. Paragraph 32 cited by the Examiner describes bypassing a load balancer and does not disclose using call requests sent by the load balancer as part of a load balancing technique.

As another example, claims 21 and 30 recite that the first one of the VoIP proxy servers to respond to the requests is assumed to have the lowest workload of the plurality of VoIP proxy servers. This assumption is not made in any of the cited art, including Denecheau. Denecheau describes network configuration and propagation differences as factors that lead to discovery frames and responses arriving at different times.

Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. § 102(e) is respectfully requested.

2. Claim Rejections - 35 U.S.C. § 103

Claims 20 and 29 have been rejected under 35 U.S.C. § 103(a) over Trethewey in view of U.S. Patent No. 5,345,587 to Fehskens. Claim 20 depends from independent claim 17 and claim 29 depends from independent claim 25. Fehskens does not cure the above-noted deficiencies of Trethewey. Thus, claims 20 and 29 are allowable for at least the reasons set forth above. In addition, Fehskens does not cancel requests in

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the claimed manner as part of a load balancing technique. As a result, the combination of Trethewey and Fehskens does not arrive at the claimed subject matter and motivation for their combination is lacking. Accordingly, reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a) is respectfully requested.

3. Conclusion

In light of the foregoing, it is respectfully submitted that the present application is in condition for allowance and notice to that effect is hereby requested. If it is determined that the application is not in condition for allowance, the Examiner is invited to initiate a telephone interview with the undersigned representative to expedite prosecution of the present application.

If there are any fees resulting from this communication, please charge same to our Deposit Account No. 18-0988, our Order No. INMEP102US.

Respectfully submitted,

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